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In the Supreme Court of the United States

October Term 1940.

STANOLIND PIPE LINE COMPANY, A CORPORATION,
Petitioner,
vs.
OKLAHOMA TAX COMMISSION, COMPOSED OF J. D. CARMICHAEL, HUBERT L. BOLEN AND J. D. DUNN,
Respondent.

Petition for Writ of Certiorari, and Brief in Support Thereof.

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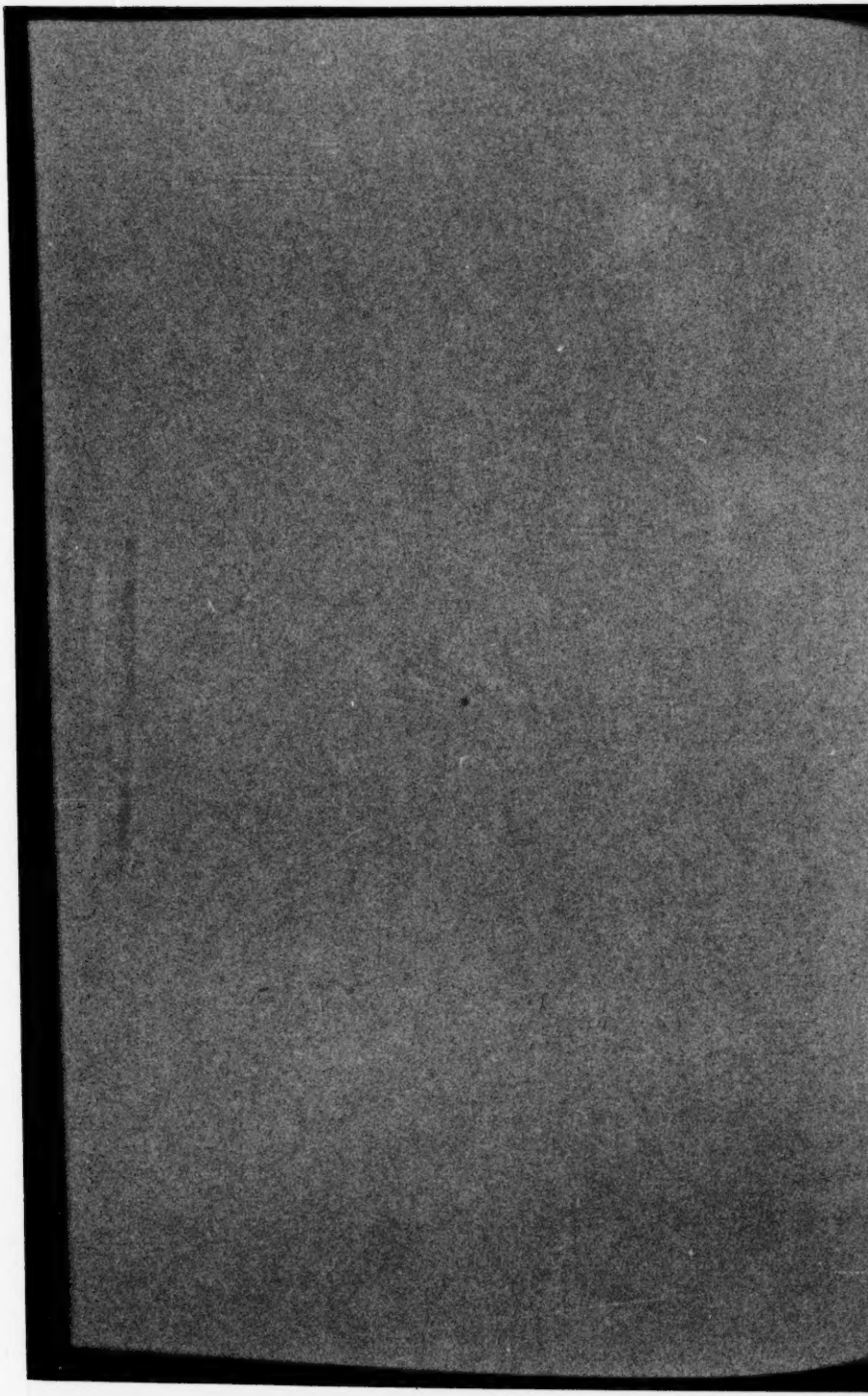

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Petitioner,
vs.
OKLAHOMA TAX COMMISSION, COMPOSED OF J. D. CARMICHAEL, HUBERT L. BOLEN AND J. D. DUNN,
Respondent.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

This case involves the validity of a statute of Oklahoma (House Bill 589, enacted by the Sixteenth Legislature, approved May 5, 1937, commonly known as the Use Tax Act of 1937, and hereinafter referred to as the "Act") under the Federal Constitution and the Constitution of the State of Oklahoma. It is asserted that the law, as applied to Petitioner, imposed an excise upon the privilege of conducting interstate commerce in violation of and contrary to the Commerce

Clause of the Federal Constitution, Article 1, Section 8, Clause 3. It is further asserted that, if the Act did not levy an excise upon the privilege of conducting interstate commerce, it imposed an ad valorem tax for state purposes in violation of and contrary to Article 10, Section 9, of the Constitution of the State of Oklahoma.

Section 4 of the Act levied an excise tax upon the privilege of using, within the state, any article of tangible personal property purchased, leased, rented or exchanged, at the rate of 2% of the purchase price thereof. The term "purchase price" was defined by Section 3 to mean the consideration paid or given to the seller or transferee of any article of tangible personal property inclusive of the actual cost of transportation from the place of purchase to the person using the same in this state. Section 5 exempted certain classes of property, not here involved, from the tax, and Section 6 provided that, if any property had already been subjected to a use or sales tax by Oklahoma, or any other state, in an amount less than the tax imposed by the Act, the provisions of the Act should not apply, but the tax should be the difference between the rate therein fixed and the rate of the previous tax. The Act was designed to complement an existing Sales Tax levied at the same rate upon articles of tangible personal property purchased, leased, rented or exchanged within the state.

Petitioner owns, maintains and operates a pipe line and pipe line system extending from Texas northward through Oklahoma and other states into Indiana. It receives deliveries of oil from connections in Oklahoma, for transportation to and delivery at points in other states. Its business in and through the State of Oklahoma is exclusively interstate. During the time in question, Petitioner purchased, outside

the State of Oklahoma, articles of tangible personal property consisting of pipe, machinery, repair parts and other articles for the maintenance and upkeep of its pipe line system, and imported such articles into the state to fulfill specific orders for the repair and maintenance of its interstate pipe line system in Oklahoma, and such articles were installed as quickly as possible after their arrival in the state.

Upon demand of the Oklahoma Tax Commission, the excise tax, claimed to be due from Petitioner, for the period from May, 1937, to and including March, 1939, for the privilege of using such tangible personal property, in the sum of Eight Thousand Nine Hundred Eeighty-two Dollars and Twenty-five Cents ($8,982.25), was paid under protest, as provided by law, and this suit thereafter commenced in the United States District Court for the Western District of Oklahoma by Petitioner to recover the amount of said privilege tax, together with interest thereon, as provided by the Act. The Petitioner prevailed and the Commission appealed. Upon review by the United States Circuit Court of Appeals, Tenth Circuit, judgment of the trial court was reversed and the case remanded with directions to enter judgment for the commission, with costs (not officially reported).

This is a petition for a writ of *certiorari* to review the decree of the United States Circuit Court of Appeals for the Tenth Circuit. (Sec. 240 (a) Judicial Code, as amended; Sec. 8 (b), Act of February 13, 1925, 43 Stat. 936, 938 and 940.)

Reasons Relied Upon for the Allowance of the Writ.

1. The decision of the Circuit Court is not in accordance with the decisions of this Court in the following cases, among others:

Helson and Randolph v. *Commonwealth of Kentucky,* 279 U. S. 245;

John D. Bingaman v. *Golden Eagle Western Lines, Inc.,* 297 U. S. 626;

Eureka Pipe Line Co. v. *Hallanan,* 257 U. S. 265;

United Fuel Gas Co. v. *Hallanan,* 257 U. S. 277;

Kansas City, Fort Scott & Memphis Ry. Co. v. *Botkin,* 240 U. S. 227;

Ozark Pipe Line Corp. v. *Monier,* 266 U. S. 555;

Southern Pacific Co. v. *Gallagher,* 306 U. S. 167;

Pacific Telephone and Telegraph Co. v. *Gallagher,* 306 U. S. 182;

Pacific Telephone & Telegraph Co. v. *Henneford,* 81 P. (2d) 786, *certiorari* denied by this court, 306 U. S. 673;

Henneford, et al., v. *Northern Pacific Ry. Co.,* 303 U. S. 16,

on appeal to this Court from a judgment of a Three Judge Court, holding an identical statute of the State of Washington to be a direct burden upon and interference with interstate commerce in violation of the Commerce Clause of the Federal Constitution, was remanded for dismissal solely on the ground that the necessary jurisdictional amount was not involved.

2. The Court below clearly erred in assuming that *Southern Pacific Co.* v. *Gallagher* and *Pacific Telephone and Telegraph Co.* v. *Gallagher, supra,* in effect overruled the decisions of this Court in *Helson and Randolph* v. *Common-*

wealth of Kentucky and *Bingaman* v. *Golden Eagle Western Lines, Inc., supra.*

3. The Circuit Court erred in failing to distinguish the principle of law exemplified by *Helson and Randolph* v. *Commonwealth of Kentucky* and *Bingaman* v. *Golden Eagle Western Lines, Inc., supra,* and other cases following this line of decisions from the principle exemplified in *Nashville C. & St. L. R. Co.* v. *Wallace,* 288 U. S. 249; *Southern Pacific Co.* v. *Gallagher, Pacific Telephone and Telegraph Co.* v. *Gallagher, supra,* and other cases following this line of decisions.

4. The Circuit Court erred in failing to distinguish the excise tax upon the privilege of *using* tangible personal property in the actual consummation of exclusive interstate commerce, levied by the Oklahoma Act, from the tax levied by the California statute upon any right or power incident to the *ownership* of tangible personal property, coming to rest in the state after interstate commerce had ceased and before actual use of such property in interstate commerce, considered by this Court in *Southern Pacific Co.* v. *Gallagher* and *Pacific Telephone Co.* v. *Gallagher, supra.*

5. The Circuit Court committed error in holding that, by implication and interpretation, the Act levied a tax upon "the retention and exercise of the right of installation of the property in question after the termination of its movement in interstate commerce and *before* the beginning of its use and consumption in the interstate business" of Petitioner, thus broadening the taxing scope beyond that expressed by the terms of the Act.

6. The Circuit Court erred in holding that a subsequent Use Tax Act, passed by the Oklahoma Legislature in 1939,

repealing the 1937 Act, here under consideration, and adopting the language of the California statute, after the same had been considered and approved by this Court in *Southern Pacific Co.* v. *Gallagher* and *Pacific Telephone and Telegraph Co.* v. *Gallagher, supra,* and after a decision of the Supreme Court of Washington in *Pacific Telephone and Telegraph Co.* v. *Henneford,* 81 P. (2d) 786, decided July 29, 1938, holding a statute of that state, almost identical with the Oklahoma 1937 Act, offensive to the Commerce Clause of the Federal Constitution, and in which this Court denied *certiorari* February 9, 1939, *Henneford* v. *Pacific Telephone and Telegraph Co.,* 306 U. S. 637, and after this suit had been instituted by Petitioner for recovery of the tax assessed against it under the 1937 Act, amounted to a legislative declaration that the *1937 Act* covered and included taxable events, as defined by the terms of the 1939 Act.

7. It was judicial error for the Circuit Court to deny the contention of Petitioner that the passage and approval of the Oklahoma Use Tax Act of 1939, adopting the identical language of the California Use Tax Act, which had previously been approved by this Court in *Southern Pacific Co.* v. *Gallagher* and *Pacific Telephone and Telegraph Co.* v. *Gallagher, supra,* demonstrated a legislative intent to make a substantial change in the then existing law; that it recognized a substantial difference between the tax levied by the two statutes; that it recognized the fact that the earlier Act was not as comprehensive as the statute in California; and that, taking legislative notice of the decisions of this Court in *Southern Pacific Co.* v. *Gallagher* and *Pacific Telephone and Telegraph Co.* v. *Gallagher, supra,* it sought to change the statute to conform to that in California.

8. The decision of the Tenth Circuit Court in this case is in direct conflict with the view adopted by a Three Judge Court in *Northern Pacific Ry. Co., Inc.*, v. *Henneford, et al.*, 15 Fed. Sup. 302.

9. The decision of the Tenth Circuit Court in this case is in direct conflict with the view adopted by the Supreme Court of the State of Washington in *Pacific Telephone and Telegraph Co.* v. *Henneford, supra,* in which this Court denied *certiorari, Henneford* v. *Pacific Telephone and Telegraph Co., supra.*

10. The Circuit Court erred in holding that the imposition, by the state, of an excise upon the privilege of using instrumentalities employed exclusively in interstate commerce did not constitute such direct and immediate burden upon commerce as to offend the Commerce Clause of the Federal Constitution.

11. If the tax levied by the Act, here under consideration, is not an excise for the privilege of actually using tangible personal property in the conduct of Petitioner's exclusive interstate business, but is a tax upon the retention and exercise of the right of installation after termination of such property's interstate journey and *before* the beginning of its use and consumption in Petitioner's interstate business, measured by the value of the property as represented by the purchase price, inclusive of the cost of transportation, then said levy constitutes an ad valorem tax on property in violation of and contrary to Article 10, Section 12, of the Constitution of Oklahoma, as amended August 15, 1933.

12. Whether the tax be a property tax, an excise, an impost, or any other kind of a duty, it is an ad valorem tax, if measured and determined by value, and thus forbidden

by Article 10, Section 9, of the Constitution of Oklahoma, as amended August 15, 1933.

Wherefore, your Petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and send to this Court, for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; that the decree of the United States Circuit Court of Appeals for the Tenth Circuit be reversed by this Honorable Court; and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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